

RICHARD BARRETT, CHAIR
IDAHO PERSONNEL COMMISSION
P.O. Box 83720
Boise, Idaho 83720-0066
Phone: (208) 334-3345

BEFORE THE IDAHO PERSONNEL COMMISSION

ANN COLER,)	
)	
Appellant-Petitioner,)	
)	IPC No. 95-16
v.)	
)	DECISION AND ORDER ON
IDAHO DEPARTMENT OF)	PETITION FOR REVIEW
CORRECTION,)	
)	
Respondent.)	
_____)	

On petition for review from the decision of the Hearing Officer, Bergquist, Kenneth G., presiding. Appellant-petitioner Ann Coler appeared through her counsel of record, Scott Chapman and Brian B. Benjamin of Randall, Blake & Cox, Lewiston, Idaho. Respondent Idaho Department of Correction (DOC) appeared through its counsel of record, Leslie L. Goddard, Deputy Attorney General, Civil Litigation Division, Boise, Idaho.

Coler petitions for review from the Hearing Officer's decision dismissing her appeal for lack of jurisdiction. The Hearing Officer ruled that Coler resigned from DOC, that DOC accepted her resignation, and, thus, Coler was not a classified employee entitled to access the grievance and appeal procedures. We AFFIRM.

I.

BACKGROUND AND PROCEDURE

This case involves the resignation of a permanent classified state employee. Ann Coler resigned from employment as a Correctional Officer for DOC on June 22, 1995. She claims that her resignation was not voluntary, *i.e.*, a constructive discharge. The Hearing Officer made detailed findings of fact, which we summarize below:

Ann Coler was a permanent classified employee, employed by DOC as a Correctional Officer at the Idaho Correctional Institution in Orofino. She held this position in Orofino from December of 1990 to June 22, 1995.

Coler was working the graveyard shift as a control officer in “A” block on June 22, 1995. At that time, Dawn Hunt was a floor officer working with Coler, and Coler’s supervisor was Sgt. Christine Ryan.

At approximately 0125 hours on June 22, 1995, Hunt requested Coler to pop certain cell doors for pill call. Pill call generally occurs around 0500 hours. Coler advised Hunt that she would not pop the doors because it was against the policy and procedure manual. Hunt reported Coler’s response to Sgt. Ryan, who in turn called Coler on the intercom and told her to carry out the request. An argument ensued, testimony indicating that harsh words were directed from Coler to Ryan. Coler walked off the job and said that she would talk with the warden in the morning. Sgt. Ryan, Sgt. Erbst, and Sgt. Peel all testified that Coler said she was quitting. (Tr. pp. 180-181, 230-232, 246-48; Respondent’s Exhibits 9, 10.) Coler testified that she told her husband at the time (who was also working at the facility) that she was thinking about quitting, and that she thereafter told her supervisor she “couldn’t work under those conditions anymore,” and

that she walked off the job despite being told that there was nothing her supervisor could do for her if she left. (Tr. pp. 41-42.)¹

Coler came to see Warden Jim Hope later that morning. He refused to talk with her, instead giving her a letter notifying her that he accepted her oral resignation. (Respondent's Exhibit 12.)

Coler attempted to grieve her resignation, claiming that she was dismissed by DOC. (Respondent's Exhibit 6.) DOC denied the grievance because she was no longer a classified state employee. (Respondent's Exhibit 7.) Coler appealed to the IPC, and the duly appointed Hearing Officer upheld DOC's action, dismissing her appeal for lack of jurisdiction. Coler now petitions this Commission for review.

II.

STANDARD AND SCOPE OF REVIEW

Upon completion of the grievance procedure, I.C. § 67-5315; I.D.A.P.A. 28.01.01.200, a classified state employee may file a timely appeal over certain matters, I.C. § 67-5316(1), to the Idaho Personnel Commission (IPC). The appeal is assigned to a duly appointed Hearing Officer. I.C. § 67-5316(3). The Hearing Officer is charged with conducting an evidentiary hearing, and he or she may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. *May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01, p. 5 (Jan. 7, 1997), citing *Soong v. Idaho Dep't of Health and Welfare*, IPC No. 94-03 (Feb. 21, 1996), *aff'd* Case No. 96-00106 (2d Dist. Ct., Dec. 6, 1996). Unless the classified employee has been dismissed, demoted, or suspended without pay, the burden of proof rests with the

¹ It should be noted that Coler's leaving placed Hunt in danger of being locked in the unit. (Tr. pp. 134-

employee to prove his or her case by a preponderance of the evidence. I.D.A.P.A. 28.01.01.201.06.

At the conclusion of the appeal stage, either party may file a timely petition for review with the IPC. I.C. § 67-5317; I.D.A.P.A. 28.01.01.202. The IPC reviews the record, transcript, and any briefs submitted by the parties. The IPC may also permit an oral argument. The IPC will review challenged findings of fact to determine if substantial, competent evidence supports the findings, and free review is exercised over questions of law.² *May, supra*. The IPC may “affirm, reverse or modify the decision of the hearing officer, may remand the matter, or may dismiss it for lack of jurisdiction.” I.C. § 67-5317(1).

III.

JURISDICTION OF THE IPC

The IPC is “authorized and directed to administer a personnel system. . . .” I.C. § 67-5301. Part of the personnel system is the grievance and appeal process. The Legislature has established within the personnel system a grievance procedure for classified state employees: “A classified employee may grieve any matter, except that compensation shall not be deemed a proper subject for consideration under the grievance procedure except as it applies to alleged inequities within a particular agency or department, and except for termination during the entrance probationary period.” I.C. §

137.) Coler also turned in her radio when she left. (Tr. p. 249.)

² In her petition for review filed September 4, 1996, Coler requests the IPC to “review the decision of the hearing officer. . . .” She does not specify or challenge any findings of fact. Rule 202.01 of the IPC Rules requires a petitioner to “specifically cite the alleged errors of fact or law made by the hearing officer.” I.D.A.P.A. 28.01.01.202.01

67-5315(1). The grievance procedure is quite expansive, allowing classified employees to grieve any matter with just two exceptions.³

With respect to appealing to the IPC after a grievance has been processed by the department, the issue(s) raised must fall within the scope of Idaho Code Section 67-5316(1). This statute defines and strictly limits the IPC's jurisdiction. *Sheets v. Idaho Dep't of Health and Welfare*, 114 Idaho 111, 753 P.2d 1257 (1988); *Stroud v. Department of Labor and Ind'l Serv.*, 112 Idaho 891, 893, 736 P.2d 1345, 1347 (Ct. App. 1987); *Fry v. Idaho Dep't of Correction*, IPC No. 94-38, p. 5 (May 13, 1996), *aff'd* Case No. CV-OC-96-02864*D (Dist. Ct. 4th Dist., Jan. 23, 1997); *Campbell v. Idaho Dep't of Admin.*, IPC No. 94-41, p. 9 (April 12, 1996); *Allen v. Idaho Dep't of Ins.*, IPC No. 94-27, p. 6 (May 12, 1995). The statute clearly limits the IPC's power to hear appeals from *classified employees*. I.C. § 67-5316(a), (b). The IPC has no power to hear an appeal from an ex-employee.⁴ *Campbell, supra*. Regardless of whether jurisdiction exists, it is clear that the IPC has the power to determine whether it has jurisdiction over an appeal. *Id.*; *Fry, supra*.

III.

ANALYSIS

The following facts are undisputed:

- (1) On the morning of June 22, 1995, around 1:25 a.m., during Coler's graveyard shift, she and her co-worker, Dawn Hunt, argued over Hunt's request to Coler to "pop" the doors of three cells for pill call;

³ We note that the grievance procedure has been changed effective July 1, 1997. HB 217aaH (1997).

- (2) The inmates had requested their doors be popped so they could seek medical attention, but they were not on the list of inmates who are known to need medication, and the scheduled time for popping cell doors was not until 5:00 a.m.;
- (3) Coler refused to pop the doors because she perceived the request to be against policy and procedure;
- (4) Hunt reported the incident to Sgt. Ryan. Ryan called Coler on the intercom and ordered her to pop the doors per Hunt's request;
- (5) Coler refused to pop the doors. She signed out of the control room and signed Hunt in to the control room;
- (6) Sgt. Ryan called Sgt. Peel, the shift supervisor, to come to the control room. Ryan told Peel what had happened, and Peel went to the front gate to speak with Coler;
- (7) Coler advised Peel what had happened, and she told him that she could not work under those conditions, and that she would return in the morning to speak with the warden. Coler was told that there was nothing that could be done if she left the job. Coler also turned in her radio per Peel's request. Coler was let out the gate; and
- (8) Later in the morning, when Coler returned to see the warden, she was given a written acceptance of her resignation. The warden refused to speak with Coler.

⁴ We note that "interested persons" are permitted to appeal official decisions or action taken by the state personnel director or IPC staff and other matters assigned to the IPC by law. I.C. § 67-5316(c), (d). These provisions are not at issue in this case.

There is no question that Coler walked off the job the early morning of June 22, 1995.

The two key Idaho cases on the doctrine of constructive discharge are *Jackson v. Minidoka Irrigation Dist.*, 98 Idaho 330, 563 P.2d 54 (1977), and *Knee v. School Dist. No. 139, in Canyon County*, 106 Idaho 152, 676 P.2d 727 (Ct. App. 1984). Those cases set forth the doctrine as follows:

It is self-evident that an employee, who resigns from his position of employment voluntarily, may not bring an action against his employer for breach of contract due to wrongful discharge. . . . A constructive discharge is, by definition, an involuntary resignation. . . . The burden is on the employee to present sufficient evidence to show that his resignation was involuntary.

. . .

The test is whether sufficient words or actions by the employer would logically lead a prudent man to believe his tenure had been terminated. . . .

. . .

Our research has disclosed that it is not appropriate to apply the doctrine of constructive discharge absent facts showing harassment, intimidation, coercion or other aggravating conduct on the part of the employer which renders working conditions intolerable.

Knee, 106 Idaho at 154, 676 P.2d at 729, citing *Jackson* (footnotes omitted).

Coler claims that her resignation was not voluntary, instead resulting from a series of events, including: (1) the intentional use of perfume by co-workers; (2) not being allowed to come in from the cold when working outside duty; (3) snowballs thrown at the fence to set off alarms; (4) receiving a derogatory package in the mail; (5) being asked to violate procedure by popping cell doors for pill call; and (6) an ongoing dispute with Sgt. Ryan involving interpretation of policies.

Based upon the record, we hold that the Hearing Officer correctly rejected Coler's claim of constructive discharge. The evidence simply does not rise to the level required to establish, by a preponderance of the evidence, a constructive discharge. With the

exception of items (5) and (6) above, the events Coler relies upon are isolated in time from June 22, 1995, she failed to file a grievance over any of these events, and we cannot find support for her claims to rise to the level required. Employees attempted to accommodate Coler's asthma, and Coler admits she did not request further accommodations. Coler also admitted that she was told to go back to outside duty when she was caught playing cards in the employee lounge. The snowball throwing incident was a one-time event occurring months before her resignation -- she was no longer on outside duty. The package was forwarded to Coler due to the fact that it was sent via United States Mail, and the department apologized for the contents of the package. With respect to the door popping incident and interpretation of policies, the event which is clearly related in time to Coler's resignation, it is undisputed that Coler simply walked off the job, placing her co-worker in danger, directing harsh language at her supervisor, informing her husband that she was thinking about quitting, then telling her supervisors that she couldn't work under these conditions anymore, turning in her radio, and walking off the job. She did not exercise her right to file a grievance over the matter, and she did not grieve any of the earlier alleged events.

In the *Knee* case, the doctrine of constructive discharge was held inapplicable in the following circumstances: (1) as an experienced educator, the plaintiff must have known that his contract could not be terminated except for limited, specific reasons; (2) the school board never identified a reason for its request for resignation, thus implying the board lacked authority to terminate the plaintiff; (3) no warning was given to the plaintiff, which is a requirement before termination proceedings can begin; and (4) at no

time did the plaintiff resist the board's request, instead simply asking for time to think about it.

Coler's case is similar to *Knee*: Coler was not threatened with dismissal or any other discipline. As a long time permanent classified employee, she must have been aware of her statutory grievance rights and the limited statutory reasons for disciplining a permanent classified employee. DOC had not initiated or otherwise threatened any disciplinary action against Coler. In fact, Coler's supervisors attempted to keep her on the job that morning, even warning her of the consequences of walking off the job -- Coler did not change her mind. The record is quite clear that Coler made the choice, voluntarily, to deal with the situation by walking off the job, telling her husband that she was going to quit and her supervisors that she could no longer work under the conditions. Although Coler denies saying the word "quit," all DOC witnesses testified that Coler told them she was quitting. There is ample support, substantial and competent evidence, to support the Hearing Officer's decision that Coler voluntarily resigned from employment, and DOC properly accepted her oral resignation later in the morning.⁵

⁵ Idaho Personnel Commission Rule 127 provides that a classified employee may resign at any time without need for written or advance approval. The department is not required to accept the resignation for it to become effective, and once an employee resigns, reinstatement is left to the discretion of the department. IDAPA 28.01.01.127.

III.

CONCLUSION

We hold that Coler voluntarily resigned her position of employment with DOC on June 22, 1997, at the time she left her job. Her resignation was voluntary and did not constitute a constructive discharge. Because she resigned and was no longer a classified state employee, Coler is not entitled to bring a grievance or appeal to the IPC. The Hearing Officer's decision is AFFIRMED, and the matter is dismissed for lack of jurisdiction.

DATED this 18th day of April, 1997.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Richard Barrett, Chair

/s/ _____
Sherry Dyer, Vice Chair

/s/ _____
Peter Boyd

/s/ _____
Ken Wieneke

/s/ _____
Don Miller

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. I.C. § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

(1) That the findings of fact are not based on any substantial, competent evidence;

(2) That the Commission has acted without jurisdiction or in excess of its powers;

(3) That the findings of fact by the Commission do not as a matter of law support the decision.

I.C. § 67-5318.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DECISION AND ORDER ON PETITION FOR REVIEW in *Coler v. Idaho Dep't of Correction*, IPC No. 95-16, was delivered to the following parties by the method stated below on the 18th day of April, 1997.

FIRST CLASS MAIL:

Scott Chapman
Randall, Blake & Cox
P.O. Box 446
Lewiston, Idaho 83501

STATEHOUSE MAIL:

Leslie Goddard
Deputy Attorney General
Civil Litigation Division
Office of the Attorney General

/s/ _____
Secretary to Executive Secretary

